(5)

a/1804

माननीय छत्तीसगढ़ उच्च न्यायालय, बिलासपुर (छ.ग.)

(सेकंड अपील नम्बर 559 /2004) **Single Bench**

अपीलार्थीनी-गण
प्रतिवादी क्रं. 3 एवम् 4,

..... 1- चितरौतिन बाई
पत्नि स्व0 श्री भाऊ केंवट
आयु 45 साल,
निवासी- ग्राम नवागांव,
तहसील भाटापारा
जिला रायपुर (छ.ग.)

2- लहनी बाई
पत्नि श्री सुरीतराम केंवट
आयु 42 साल,
निवासी- ग्राम कुकदा
तहसील भाटापारा
जिला रायपुर (छ.ग.)

-- विरुद्ध --

उत्तरवादी-गण
वादी

.... 1- मनोहर पिता ढेलऊ केंवट
आयु 53 साल,
निवासी ग्राम नवागांव
तहसील भाटापारा
जिला रायपुर (छ.ग.)

29.11.04

उत्तरवादी
प्रतिवादी क्रं.-1 तथा 2

.... 2- बहस राम पिता स्व. ढेलऊ केंवट
आयु 48 साल,
निवासी ग्राम नवागांव
तहसील भाटापारा
जिला रायपुर (छ.ग.)

3- अगरौतिन बाई
पत्नि स्व0 खोरबहरा केंवट
आयु 63 साल,
निवासी- ग्राम अर्जुनी
तहसील बलौदा बाजार
जिला रायपुर (छ.ग.)

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प्रतिवादी क्रमांक-5, ... 4- छत्तीसगढ़ शासन,
द्वारा/कलेक्टर, रायपुर (छ.ग.)

धारा 100 व्यवहार प्रक्रिया संहिता के अन्तर्गत
सैकंड अपील.

न्यायालय प्रथम अपर जिला न्यायाधीश, बलौदा-
बाजार द्वारा सिविल अपील क्रमांक 49-अ/2003
में पारित निर्णय और डिक्री दिनांक 5/10/04
के विरुद्ध सैकंड अपील.

उक्त व्यवहार अपील अतिरिक्त व्यवहार न्यायाधीश,
वर्ग-2, बलौदा बाजार द्वारा व्यवहार वाद क्रमांक-
218-अ/2001, पक्षकार -मनोहर विरुद्ध बहसराम
वगैरह में पारित निर्णय और डिक्री दिनांक 15/11/03
से उत्पन्न हुआ.

अपील मूल्यांकन - 1100=00 रूपया

न्याय शुल्क 180=00 रूपया (जो अधीनस्थ न्यायालय
में भी भुगतान किया गया था)

प्रकरण के तथ्य

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक S.A. 559/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

11.02.2005:-

Shri Sree Kumar Agrawal, learned Sr.Advocate with Shri Akhil Agrawal, learned counsel for the appellants.

Shri J.R.Verma, learned counsel for the caveator.

The instant Second appeal has been preferred by the appellants/defendants No. 3 and 4 against the impugned judgement passed by first A.D.J., Baloda Bazar in Civil Appeal No. 49-A/2003 and by which the appeal preferred by the appellants has been dismissed and the judgment and decree passed by the trial Court has been confirmed.

Respondent No. 1 (hereinafter referred to as 'plaintiff') filed a suit for declaration and perpetual injunction and partition against the appellants and respondent No.2 and 3 on the averment that the suit property is a coparcenary property recorded in the name of their father Delaou. The appellants and respondent No. 3 are sisters and respondent No. 2 is the brother of the plaintiff. Father Delaou had given four acres of land each to the plaintiff and the defendant No. 1 on the partition during his lifetime and in the remaining two acres of land also the plaintiff and defendant No. 1 have possession. However, the defendants No. 2, 3 and 4 were creating dispute regarding the suit property and have initiated proceedings before the Revenue Courts. It was also pleaded by learned counsel for the appellants that though defendants No. 2 to 4 are not the members of the coparcenary property and do not have any right of partition over the suit property and the relief was sought that the plaintiff was entitled for half share on the suit property and the defendants should be restrained from interfering with the possession of the plaintiff and share

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आदेश पत्रक

मामला क्रमांक S.A. 533/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

be fixed. Defendant No. 1 namely Bahas Ram in his reply submitted that he is also entitled for half share in the suit property and defendants No. 2 to 4 has no right over the suit property. He further pleaded that on the application of defendants No. 3 and 4, Nayab Tehasildar, Bhatapara vide order dated 10.03.1997 passed in Revenue Case No.3-A/27 year 1996-97 had partitioned the property which was subsequently set aside by the S.D.O., Bhatapara vide order dated 27.02.1999. The appellants/defendants 3 and 4 in there written statement denied the ~~application~~ averment of the plaint and stated that suit property was not a coparcenary property and they also denied the allotment of four acres of land each to plaintiff and defendant No. 1 during the life time of Delaou. It was submitted that the defendants and plaintiff were jointly in possession of the suit property and their names have been recorded in the Revenue records. The Nayab Tehasildar, Bhatapara, vide order dated 10.03.1997 had partitioned the suit property and in pursuance of the said partition the defendants No. 3 and 4 are in possession.

However, it was admitted that the order of partition dated 10.03.1997 of Annexure D/3 has been set aside in appeal by the S.D.O., Bhatapara and even then, in compliance of the above partition order defendants No. 3 and 4 have been put in possession vide order dated 23.10.1997. They also pleaded that the Nayab Tehasildar, Bhatapara in Revenue Case No. 7-A/27 year 1999-00, Bahas Ram Vs. Manohar had passed an order to the detriment of the interest of defendants No. 3 and 4 against which they preferred an appeal before S.D.O., Bhatapara which is pending. On the basis of the pleadings of both the parties issues were

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आदेश पत्रक

मामला क्रमांक B.A.559/04 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

framed and learned Civil Judge, Class-II, Baloda Bazar, also held the property coparcenary property and partially decreed the suit holding that the plaintiff was entitled for 1/3rd share and 1/5th of 1/3rd share to the suit property whereas defendant Nos. 2 to 4 were entitled for 1/5th of the 1/3rd share each to the suit property. The defendants No. 3 and 4 preferred an appeal and the learned First Appellate Court dismissed the appeal and confirmed the judgment and decree passed by the learned Civil Judge.

Learned counsel for the appellants/defendants 3 and 4 assailed the concurrent findings of both the Courts below basically on the ground that in pursuance of the partition order dated 10.03.1997 which has been exhibited as Ex. D/3, the appellants were allotted 1/5th share each along with plaintiffs/defendants No. 1 and 2 and the plaintiff and defendants 2, 3 and 4 had submitted in their written statement vide document of Ex. D/1 and D/2 by which they had expressed that the suit property has been partitioned and the defendants Nos. 2 to 4 have moved an application for possession in the Court of Nayab Tehasildar and the plaintiff has no objection against the delivery of possession to the defendants and thus in the light of documents of Annexure D/1, D/2 and D/3, the partition of the suit property effected and accepted by the respondents/plaintiffs and the plaintiff has waived this right to raise the question of title for filing a separate suit.

I have heard learned counsel for the appellants/defendants 3 and 4 and have also gone through the pleadings of both the parties and documents filed by the respective parties.

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — ५ —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Though the defendants disputed the contention of the plaintiff that the suit property was the coparcenary property. However, the finding in this regard by the trial Court which was subsequently confirmed by the appellate Court is based on Revenue records which has not been rebutted by the defendants. Therefore, the findings of both the Courts below that the suit property was a coparcenary property requires no interference and the counsel for the appellants has not challenged the above finding. The submission of the appellants that in pursuance of the partition order dated 10.03.1997 of Annexure D/3 and subsequent consent given by the plaintiff by document of Annexures D/1 and D/2 on 27.08.1997, the plaintiff has waived his right to raise the question of title is not accepted for the following reasons;

(i) that even according to the averments in the written statements the order of Annexure D/3 has been set aside in the appeal by the S.D.O. and therefore, the submission of the appellants that the said suit property partitioned under Section 178 of M.P. Land Revenue Code can not be accepted. The other reliance on document of D/1, D/2 has also no force because from perusal of the above documents it is evident that the said documents do not refer to revenue case number in which the said applications were filed and the extent of share allotted to defendants No. 3 and 4. Thus, documents do not show as to what share was allotted to the defendants No. 3 and 4 and therefore these documents do not establish that in pursuance of the partition order of Ex.D/3, the appellants were allotted share with the consent of the plaintiff. Apart from this, the document of EX.P/8 which is certified copy of the order dated 09.05.2002 recorded in the Court of Additional Tehasildar, Bhatapara in Revenue

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आदेश पत्रक

मामला क्रमांक S.A. 559/09 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Case No. 6-A/27 year 99-2000, in the case of Chitrautin Vs. Manohar, it appear that some proceedings with respect to partition was pending which was initiated at the instance of the appellants and the above proceedings was stayed on the ground that dispute regarding partition is pending before the Civil Judge and therefore the above proceedings should be stayed. These documents has not been denied by the appellants/defendants.

Thus, considering the material available on records, I am of the opinion that judgment and decree passed by the Civil Judge, Class-II, Baloda Bazar which was confirmed by the appellate Court is a concurrent finding of facts and no substantial question of law arises for adjudication of this second appeal and the appeal deserved to be dismissed and it is accordingly dismissed at this admission stage.

However, looking the facts and circumstances of the case there shall be no order as to costs.

Sd/-
Dhirendra Mishra
Judge